

**COMMITTEE ON SUPERIOR COURT  
MINUTES**

Friday, June 2, 2006  
10:00 am to 2:00 pm  
State Courts Building  
1501 W. Washington, Conference Room 230  
Phoenix, AZ 85007

**MEMBERS PRESENT:**

Mr. K. Kent Batty  
Honorable James E. Chavez  
Honorable Norman J. Davis  
Honorable Margaret H. Downie  
Honorable Robert Duber, II  
Honorable Richard S. Fields  
Honorable Charles V. Harrington  
Honorable Bethany G. Hicks  
Honorable Cathy Holt

Honorable Michael K. Jeanes  
Honorable William T. Kiger  
Honorable Kenneth Lee  
Honorable Margaret Maxwell  
Honorable Stephen F. McCarville  
Honorable Emmet J. Ronan  
Mr. David Sanders  
Honorable James A. Soto

**MEMBERS ABSENT:**

Honorable Silvia Arellano  
Ms. Sylvia Brandfon Ph.D.  
Honorable Pat Escher  
Ms. Karen D. Ferrara  
Honorable Andrew Gould

Honorable Denise I. Lundin  
Ms. JoJene Mills  
Honorable Fred Newton  
Honorable Dale Nielson  
Honorable Nanette Warner

**PRESENTERS / GUESTS:**

Mr. Gary Graham  
Mr. Brett Watson  
Mr. Patrick Scott  
Ms. Nancy Swetnam  
Ms. JR Rittenhouse

Ms. Leila Gholum  
Ms. Melinda Hardman  
Mr. John Sousa  
Ms. Konnie Neal  
Honorable William J. O'Neil

**STAFF:**

Ms. Susan Pickard

Ms. Kim Ruiz

**I. REGULAR BUSINESS**

**A. WELCOME AND OPENING REMARKS**

With a quorum present, the June 2, 2006, meeting of the Committee on Superior Court was called to order by Judge James Soto, Chair, at 10:15 am.

**B. APPROVAL OF MINUTES FROM May 3, 2006**

The minutes for the May 3, 2006, Committee on Superior Court conference call meeting were presented for approval.

**MOTION:** To approve the May 3, 2006, meeting minutes as presented. Motion passed unanimously. **COSC-06-011**

## II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

### A. Court Rules Forum

Mr. Gary Graham, AOC Information Technology Division

Mr. Graham presented the new Arizona Court Rules Forum website sponsored by the Arizona Supreme Court and the Administrative Office of the Courts. The website allows electronic filing and monitoring of court rule petition and comments. In addition, the Court Rules Forum provides visitors with a single point of access to all aspects of court rule making in Arizona: from a database of existing rules of court to recent amendments of those rules, pending rule petitions and comments, recent court actions on rules, and an annual schedule of the Court's consideration of rules. Rule change petitions may be filed using electronic filing or by the traditional paper filing method. The court encourages the use of electronic filing and provides user-friendly instructions for using the website.

### B. Proposed Amendments to Arizona Code of Judicial Administration (ACJA) §§ 6-107: Safety Training and 6-113: Firearms Standards

Mr. Brett Watson, AOC Juvenile Justice Division

Mr. Watson presented the proposed amendments to ACJA §§ 6-107 and 6-113 asking for a recommendation to the Arizona Judicial Council for approval from the Committee.

Proposed amendments to ACJA § 6-107:

- To clarify post Defensive Tactics Academy accommodations provisions.
- To clarify practical testing requirements in the Firearms Training Academy

Committee questions and concerns:

The remedial training seems to go to extraordinary means to remediate someone that cannot qualify. It seems to require the certified firearms instructor and a representative of the AOC to tailor-make a program for an individual that has previous failed twice to now pass. What is the purpose of this approach, and what additional resources will this require? There are also no provisions for additional or more frequent testing for someone that has been remediated.

Response

The old language required an individual that failed one part of the qualification to complete the entire eight-hour remedial training, even though, many times remediation could have been handled right on the spot. The proposed change is to provide for the instructor to do remediation at that time and remove the requirement for sixteen hours of remediation. Developing a remedial course was not the intent of the amendment. It is believed instructors can work with individuals immediately on the course.

The amendments were then moved for approval.

**MOTION:** To support the adoption of the code sections ACJA §§ 6-107: Safety Training and 6-113: Firearms Standards as presented to the Committee. Motion passed unanimously. **COSC-06-012**

### C. Committee on Compulsory Arbitration in the Superior Court in Arizona

Mr. Patrick Scott, AOC Court Services Division

The Committee on Compulsory Arbitration was established to review a report, *A Study of Court-Connected Arbitration in the Superior Court of Arizona*, prepared by Lodestar Dispute Resolution Program, to evaluate the compulsory arbitration system in Arizona. This committee reviewed the arbitration rules and the statutes concerning arbitration to make recommendations to the Arizona Judicial Council.

Recommendations from the report that should be adopted:

- Arbitration should be kept in Arizona.
- All active bar member attorneys with four years experience are required to be participants as arbitrators.

Recommended revisions:

- To raise the case qualifying limit from \$50,000 to \$75,000.
- To raise the compensation for arbitrators from \$75 to \$150.
- If the statute is not changed pursuant to compensation, then allow the option of CLE credits in lieu of compensation.
- To limit the motions an arbitrator can rule on. Specifically stating that all dispositive motions will be given to the judge, since there is already a high appeal rate in that area.
- To appoint an arbitrator as soon as possible in the case, but no later than 120 days after the filing of the answer.
- The notice of decision automatically becomes the Award within thirty days, if no Award has been filed. If neither party acts to ask for judgment on the Award, the case is automatically dismissed after ninety days.
- They drafted a new section that includes the following:
  1. Disclosure, by the filing party, within ten days of the filing,
  2. For the defendant, filing HIPA releases in personal injury cases within 30 days of the answer, and
  3. The Rules of evidence will guide the court without requiring a strict adherence. Similar to the provision put in the Family Law Rules.
- To have the court direct the AOC to track the effect of these rules changes and see if they are as beneficial as intended.
- To develop a comprehensive training program for arbitrators, so they have a greater comfort level when performing this duty.

Committee questions and concerns:

- How would serving as an arbitrator be considered "Continuing Legal Education" (CLE)?

Many times when an attorney is assigned a case for arbitration it is an area of law they do not specialize, so they need to extensively research the area before hearing the case. There is also the experience of seeing the process from a judge's point of view. It is a learning experience for them. There would also be a cap on the number of CLE credits that could come from arbitration.
- It is concerning to raise the qualifying limit to \$75,000, while not increasing the number of years experience the attorney needs to have. That is a large sum of money to be determined by a fourth year attorney, especially if it is an area of law they are not specialized.
- The committee should define what is meant by dispositive motions. Dispositive motions could include motions for summary judgment, discovery motions to preclude evidence, to strike witnesses. If dispositive motion only means Motions for Summary Judgment, you should state that. If it is broader than that, then it really should be spelled out.

The committee will change this language to be more specific.
- The State Bar is also drafting something as a proposal to rule 74. There recommendation was to have the arbitrator rule on all motions, including dispositive motions.

This presentation was for information only. Mr. Scott will take COSC's comments back to the Committee on Compulsory Arbitration.

**D. Proposed Amendments to ACJA §§ 7-201: General Requirements, 7-202: Fiduciaries, 7-203: Confidential Intermediary, 7-205: Defensive Driving, 7-206: Court Reporters and 7-208: Legal Document Preparers**

Ms. Nancy Swetnam and Staff, AOC Certification and Licensing Division

The proposed amendments to various sections of the ACJA provide standardization across the sections and incorporating best practices. The recommended amendments are:

§ 7-201: General Requirements - contains general provisions regarding certification, licensing, complaints, hearings and the disciplinary process.

- Establishes “regulatory boards” for each profession. Each board will have the responsibility for final decisions on certification and complaints, and will make recommendations to the Supreme Court on policies, procedures and rules affecting the applicable profession. [§ 7-201(D)]
- Requires the administrative director to establish time frames for the processing of certification applications and audits. [§ 7-201(D)]
- Requires the administrative director to establish procedures regarding credit reports. [§ 7-201(D)]
- Authorizes the administrative director to appoint ethics advisory committees. [§ 7-201(D)]
- Authorizes the division director of the Certification and Licensing Division to issue investigative subpoenas. [§ 7-201(D) and (H)]
- Restricts the number of times an applicant can retake the examination for certification. [§ 7-201(E)]
- Establishes criteria for board review of an applicant with a conviction record. [§ 7-201(E)]
- Authorizes the board to conduct an informal interview with an applicant for certification. [§ 7-201(E)]
- Provides an expedited process for complaints that are without merit or are outside the jurisdiction of the Supreme Court. The Certification and Licensing Division director will have the authority to dismiss complaints without merit and to refer complaints without jurisdiction to other appropriate entities. The complainant will have the right to request review of the director’s decision by the board. [§ 7-201(D) and (H)]
- Grants boards authority to issue cease and desist orders for enforcement of the ACJA sections and applicable court rules and statutes. [§ 7-201(E)]
- Provides procedures for reinstatement after suspension or revocation. [§ 7-201(E)]
- Grants authority to investigate and take disciplinary action if the misconduct by the certification holder occurred while the certification was active. [§ 7-201(H)]
- Provides an “opt in” process for the complainant where the complainant can request to be kept informed of the progress of the complaint. [§ 7-201(H)]
- Provides a process for the receipt and review of anonymous complaints.
- Specifies the qualifications for hearing officers and authorizes the hearing officer to make a recommendation on the appropriate sanctions in a complaint case upon a finding of violations. [§ 7-201(H)]
- Adds “unprofessional conduct” as grounds for discipline. [§ 7-201(H)]
- Specifies that complaints dismissed by the division director for lack of jurisdiction and clear insufficiencies are confidential. All other complaints are public record upon a finding of probable cause. [§ 7-201(H)]
- Authorizes the board to find a violation for a “technical error” but not impose a sanction. [§ 7-201(H)]
- Provides an expedited hearing process for emergency suspension cases. [§ 7-201(H)]
- Specifies the disciplinary clerk of the Certification and Licensing Division will accept the filings associated with certification and disciplinary hearings. [§ 7-201(H)]
- Expedites the processing and resolution of complaints by providing the option for a “Formal Interview” in front of the Board. [§ 7-201(H)]
- Establishes board policies. These policies prohibit the use of proxies in certification and complaint issues, but allow the proxies on administrative matters. [§ 7-201(I)]

Committee questions and concerns:

- The section regarding Judicial Review, first says that decisions of the board are final, but then confers on a party the right to file a petition for special action within one year. One year seems very excessive. Thirty-five days is the limit on administrative appeals, and special actions are thought to be time sensitive.

Under the current rules there is no time limit, so we added the time limit of one year, but we are in agreement with changing it to the standard thirty-five days.

- How will this effect staffing with regard to the creation of boards and staffing committees as opposed to investigation of claims?

It should involve less staff work, and will speed the process up.

- Statutory special actions must be reviewed because the court has no discretionary jurisdiction. The majority are discretionary review, where the court can decline jurisdiction, if appropriate. The new provision almost seems to say the superior court has to take jurisdiction. You might want to consider just stating that the decisions of the board, pursuant to this section, are final. Then delete the rest. A person still has the right to file a special action, while not binding a superior court to review them.

**MOTION:** To amend the first sentence of ACJA § 7-201(H)(28) on Judicial review to read, "Decisions of the board, pursuant to this section and the program's specific sections, are final." Then strike all other language. Motion passed unanimously. **COSC-06-013**

**MOTION:** To recommend approval of ACJA § 7-201 as modified. Motion passed unanimously. **COSC-06-014**

§ 7-202: Fiduciaries

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; reference to these provisions in § 7-202 is stricken.
- Establishes the Board of Certified Fiduciaries. The board will make all final decisions on certification and complaints and will make recommendations to the Supreme Court on policies, procedures and rules for the program. [§ 7-202(D)]
- Petition for ability to sit for examination. Provides ability for an individual to petition the board to justify why the petitioner should be relived from meeting the requirements to sit for the examination. The petitioner must also demonstrate knowledge and the minimum competencies to sit for the examination. [( § 7-202(E)]
- Status of Trainee. A trainee could only remain in a trainee status for a maximum of three years as that is the longest length of time necessary to achieve the experience requirement under subsection E for certification. [( § 7-202(F)]
- The Code of Conduct. Amended to reflect the change in court rule for notification of death or change in address of client or ward. [(§ 7-202(J)]
- The Code of Conduct. Amended to reflect if a fiduciary is preparing a power of attorney or other legal document, the certified fiduciary shall be certified as a legal document preparer, except for documents required by court order. [(§ 7-202(J)]
- The Code of Conduct. Amended to require disclosure to the public, if the certified fiduciary is serving as a power of attorney or in a fiduciary capacity other than a court appointed guardian, conservator or personal representative. [(§ 7-202(J)]
- The Code of Conduct. Amended to require the court-appointed guardian to visit the ward a minimum of four times per year or as is needed by the ward. [(§ 7-202(J)]

There was no committee discussion.

**MOTION:** To recommend approval of ACJA § 7-202 as presented. Motion passed unanimously. **COSC-06-015**

§ 7-203 – Confidential Intermediaries (CI)

- Makes technical changes, in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; any reference to these provisions in § 7-203 is stricken.
- Adds a definition for a “mentor.” ACJA § 7-203 allows experienced confidential intermediaries to serve as a mentor for a less experienced confidential intermediary. [§ 7-203(A)]
- Establishes the Board of Confidential Intermediaries. The Board will have the final responsibility for all certification and disciplinary matters, and will make recommendations to the Supreme Court on policies, procedures and rules affecting confidential intermediaries. [§ 7-203(D)]
- Clarifies the procedure when a confidential intermediary withdraws from a case or completes the search. [§ 7-203(F)]
- Provides that the certification of confidential intermediaries will expire every two years, instead of every three years and requires confidential intermediaries to complete 12 hours of continuing education during the two year certification period. [§ 7-203(G)]
- Amends the certification fee schedule to prorate certification fees to conform to the two year certification period. Adds miscellaneous fees. [§ 7-203(K)]
- Amends the Client Fee Schedule to increase the fees a confidential intermediary may charge a client to perform a search. [§ 7-203(M)]
- Adds continuing education policies, specifying that confidential intermediaries will submit an affidavit of continuing education compliance with their application for renewal of certification. Confidential intermediaries will be subject to random audits of their continuing education. [§ 7-203(L)]

There was no committee discussion.

**MOTION:** To recommend approval of ACJA § 7-203 as presented. Motion passed unanimously. **COSC-06-016**

§ 7-205 - Defensive Driving

- Since this section deals primarily with defensive driving schools and instructors, it is recommended to have it deferred to the Limited Jurisdiction Committee.

**MOTION:** To recommend approval of the portions of ACJA § 7-205 that apply to Superior Court and defer the rest of the section to Committee on Limited Jurisdiction Courts. Motion passed unanimously. **COSC-06-017**

§ 7-206 – Certified Court Reporter

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; reference to these provisions in § 7-206 is stricken.
- Incorporates the statutory changes enacted by the 2005 Legislature requiring certification of voice writers and reference to “certified reporters” instead of “court reporters”. The statutory changes require that voice writers hold certification by January 1, 2007 and specify an applicant may qualify for certification by passing the RPR or CVR examination, or “an alternative demonstration of proficiency approved by the Supreme Court.” The RPR examination is the examination typically used for stenographic reporters, the CVR for voice writers. [§ 7-206(E)]
- Grants the Board of Certified Reporters the authority to renew provisional standard certification if the reporter held a provisional standard certificate on December 31, 2005 and

has passed two of the three skills legs of the RPR and the written examinations by December 31, 2006. The reporter must participate in every subsequent administration of the RPR until the pass the RPR. [§ 7-206(G)]

- Clarifies the fee a reporter may charge for additional copies of a transcript. [§ 7-206(J)(3)]
- Increases the fee for initial certification to \$220.00 from \$200.00. The annual renewal fee will remain at \$200.00. Increases the examination fee to \$50.00 from \$25.00 and adopts other miscellaneous fees. [§ 7-206(K)]
- Amends the continuing education policies, specifying that certified reporters will submit an affidavit of continuing education compliance with their application for renewal of certification. Certified reporters will be subject to random audits of their continuing education. [§ 7-206(L)]
- Adopts the Arizona Transcript Format Standards as recommended by the Keeping of the Record Committee. [§ 7-206(M)]
- Member of the Public, Joseph Notaro, President of Voice Writers of America, want to be regulated and participated fully in licensing, but want to have the CVR qualified as a form of exam. He then explained how the voice writer works and the schooling required.

Committee questions and concerns:

- The Committee is only hearing one side of the issue, and doesn't really know if the information is fully accurate. What is the basis of the opposition if all things are equal regarding the testing? The only way to make the tests equivalent is to say one can be exchanged for the other.

Response - It is not a matter of comparing one exam to another. What the exams measure with regard to knowledge, skills and abilities is essentially the same, but the exams are very different. The RPR has been held up as the "Gold Standard", but in the testing community there is no "Gold Standard". All that matters is if it is testing what it should be testing.

**MOTION:** To recommend approval of the CVR testing section of ACJA § 7-206 as presented. 4-0-10. Motion failed. **COSC-06-018** Those members abstaining from the vote stated they didn't have enough information to make a decision.

The Board of Certified Court Reporters is recommending that people holding provisional certifications should have additional time to take and pass the RPR. They are allowed to hold their provisional certification as long as they are taking the RPR at every opportunity (2x/year).

Committee questions and concerns:

- Shouldn't there be an ultimate limit for how long they can keep their provisional certification if they keep failing the exam?  
You can't limit the number of times they can take the exam, due to statute, but you can take away their provisional status.
- The Superior Courts are courts of record and they have to be accurate with integrity and high quality. We need to ensure that the court reporters taking the record are qualified.
- Once a court reporter passes the exam once, do they ever have to take it again for recertification?  
No. There should be some kind of provision for testing to monitor abilities, skills and knowledge.

**MOTION:** To recommend approval of section ACJA § 7-206 that addresses provisional status as modified, limiting how long a court reporter can keep their provisional status to only six exam attempts. 4-9-1 Motion failed. **COSC-06-019**

**MOTION:** To recommend that ACJA § 7-206 be maintained as the code currently reads with regard to provisional certifications. 7-4-2 Motion passed. **COSC-06-020** (Kent Batty was out of the room)

The Board of Certified Court Reporters is recommending that the initial copy of a transcript will be charged at the full copy rate, and additional copies can be charged at a reduced rate. Court reporters can set their own fees, but they currently have to charge the parties the same rate to avoid bias. This amendment has to do with the issue of multiple defendants on one side. Are they seen as multiple parties or one party? This chooses to see them as one party, charging the full rate for the first transcript, and a reduced rate for all other copies.

Committee comments and concerns:

- There will be nothing but problems with this. There will be discovery disputes as to who is going to pay the full rate and who pays the reduced rate.

**MOTION:** To recommend approval of a reduced rate for additional transcript copies in section ACJA § 7-206, as presented. 3-10-0 Motion failed. **COSC-06-021** (Kent Batty was out of the room)

**MOTION:** To take no position on the whole amendment to section ACJA § 7-206, and forward only the specific recommendations made. Motion passed unanimously. **COSC-06-022** (Kent Batty was out of the room)

#### §7 -208 - Legal Document Preparer (LDP)

- Makes technical changes in conjunction with the proposed changes to § 7-201: General Requirements. As proposed, ACJA § 7-201 will now contain all general requirements regarding administration, certification and disciplinary action; any reference to these provisions in § 7-208 is stricken.
- Incorporates recent amendments to Rule 31, Rules of the Supreme Court regarding the unauthorized practice of law. [§ 7-208(B) and (E )]
- Adds a definition for a designated principal. [§ 7-208(A)]
- Strikes the qualifiers for the public members of the Board of Legal Document Preparers. {§ 7-208 (D)}
- Strikes the language for initial certification as initial certification will no longer exist after July 1, 2006. All certificate holders must convert to standard certification by that date. [§ 7-208(F)]
- Requires legal document preparers to place their name and certificate number on all documents they prepare, unless expressly prohibited by a non-judicial entity. The current § 7-208 requires the name and number only on those documents prepared for filing in an Arizona court. [§ 7-208(F)]
- Clarifies the role and supervision of a trainee. [§ 7-208(F)]
- Prohibits a legal document preparer from denigrating judicial officers or judicial staff. [§ 7-208(J)]
- Increases the fee for initial certification to \$325.00 from \$250.00 per year. The annual renewal fee will be \$300.00 per year. Adopts other miscellaneous fees. [§ 7-206(K)]
- Amends the continuing education policies, specifying that legal document preparers will submit an affidavit of continuing education compliance with their application for renewal of certification. Legal document preparers will be subject to random audits of their continuing education.[ § 7-208(L)]

Committee questions and concerns:

- Concern was voiced about the structure of the Board for the LDP. It is primarily comprised of LDP, can we trust them to regulate themselves?  
The board currently exists and has been functioning very well.



**MOTION:** To recommend approval of ACJA § 7-208 as presented. Motion passed unanimously. **COSC-06-023**

**E. Legislative Update**

Ms. Leila Gholam, AOC Legislative Liaison

Ms. Gholam informed the members that the cycle for the next legislative session has begun, even though this session has not yet ended. Last year there were a little over twenty (20) bills that came through the committees to the AJC, and the AJC voted to forward eight (8) of those bills to the legislature.

The following seven (7) AJC Bills passed and were signed by the Governor:

**H2094: dependency hearings; private service provider** - In a juvenile action, if the court finds a parent or child has the right to receive medically covered services from an agency or private service provider; after giving notice and an opportunity to be heard, the court may order an agency or private service provider to appear at a hearing to discuss the child or parent's service plan. The court may order only those services, that an agency or private service provider determines are medically necessary covered services, which they are entitled. An agency or private service provider may meet with the parent or child's representative prior to the hearing to coordinate services. (Title 8)

**H2125: foster care review board; continuation** - Extends the Arizona Foster Care Review Board 10 years to July 1, 2016. Retroactive to July 1, 2006. (Title 41)

**S1047: courts; personnel and volunteers** - Provides authority to fingerprint and conduct criminal background checks of current and prospective judicial branch contractors and volunteers. Includes applicants applying for certification to become legal document preparers. (Title 12)

**S1053: probation; extension** - Allows inmates sentenced with a probation tail to be eligible for temporary early release to probation, up to 90 days, for purposes preparatory to the return to the community, if community supervision is waived. The bill is prospective and the 90 days would be added to the probation term. (Titles 7, 13 and 31)

**S1116: competency; sealed reports; exceptions** - Permits reports submitted to the court during a proceeding held to determine whether a defendant (adult or juvenile) is competent to stand trial to be available after an admission or adjudication of delinquency or after final disposition of the case; (1) to a treatment provider for the purposes of assessment, supervision or monitoring of the defendant (2) to a probation department or the Department of Juvenile Corrections for the purposes of supervision, monitoring, treating or assessing the defendant. (Titles 8 and 13)

**S1227: interstate compact; adult offender** - Increases the maximum annual assessment levied by the Interstate Commission on Adult Offenders by \$500 to \$25,500. (Title 31)

**S1242: traffic ticket enforcement assistance program** - Expands the Traffic Ticket Enforcement Program. Permits the court to request MVD to withhold the registration renewal on a person's vehicle if a person has failed to pay any outstanding fees, court costs, assessments and penalty enhancements, in addition to any fines, penalties and surcharges covered by current law. Notification must be given to all persons listed on the title that the court is sending notice to MVD to hold renewal of the person's vehicle. A co-owner of the vehicle subject to TTEAP, who did not receive any of the citations that resulted in the request to hold the registration, may file a sworn petition in any court where the citation(s) were issued to waive the request to MVD requiring the withholding of a registration renewal. If the person does not live in the jurisdiction where the court in which the citation(s) was filed is located the person can appear telephonically if oral argument is required. Removes the \$200 threshold in order to trigger TTEAP. (Title 28)

Ms. Gholam also gave an update on the following major implementation bills:

**H2819: adult probation; county responsibility** - Beginning in fiscal year 2006-2007, counties with a population of at least 2 million (Maricopa County) will fund both adult and juvenile probation services. Any centralized support services will be provided by AOC. AOC

will not disburse any direct state aid for probation services. Probation ratios will not apply however Maricopa County must maintain probation standards that are consistent with evidence based practices in differentiated case management. The county will give annual performance reports to the Chief Justice, Speaker of the House and President of the Senate on or before October 1 of each year. Probation surcharges collected in Maricopa County Superior, Justice, and Municipal Courts, will be transmitted to Maricopa County. The probation surcharge fee is increased from \$5 to \$10 for all counties other than Maricopa County. The probation surcharge fee in Maricopa County is set by the Maricopa County Board of Supervisors. (Titles 8, 11, 12 and 13)

**S1142: retirement; corp; judiciary** - Adds probation, surveillance and juvenile detention officers to CORP. Establishes a local AOC review panel. A number of questions have been raised as to cost. Amendment defines probation and surveillance officers. (Title 38)

**S1267: integrated family court; pilot programs** - Requires the implementation of the two year Integrated Family Court pilot program that was recommended by the Domestic Relations Committee. The Supreme Court will implement this program in two counties (Pinal and Coconino) with a population of 500,000 or less beginning on July 1, 2006 using an appropriation of 1.75 million dollars from the State general fund. (Title 25)

**S1371: sex offenders; gps monitoring; appropriations** - Beginning November 1, 2006, if a term of probation is imposed on a person convicted of a dangerous crime against children the court must require global position system monitoring for the term of probation. A person convicted of a dangerous crime against children who is discharged from prison or released on parole, community supervision, work release or other conditional or temporary release be required to be on global position monitoring system. Any person who interferes with a monitoring device by removing or bypassing the device or assisting a person in removing or bypassing the device is guilty of a class 4 felony. Will include a GPS study committee. (Titles 13 and 41)

Updates on some other bills of interest are:

**H2076: weapons; checked at the door** - If an individual requests after January 1, 2009 that an operator of an establishment or sponsor of an event store a deadly weapon, storage must be provided for the weapon that is readily accessible on entry and available for immediate retrieval on exit. If storage is not provided the person carrying a deadly weapon can not be convicted of §13-3102, misconduct involving weapons. (Title 13)

**H2133: lengthy trial fund; juror compensation** - Jurors who serve on a trial lasting more than five days and who do not receive their normal wages from their employer are eligible to receive reimbursement of lost income up to \$300 per day beginning on the fourth day. (Title 21)

**H2292: child support; court orders** - If a court order does not specify the date when current support begins, the support obligation begins on the first day of the month following the entry of the orders. In calculating child support arrearages not reduced to a final written money judgment, interest accrues at the annual rate of 10% beginning at the end of the month following the month in which the support payment is due. Past support that is reduced to final written money judgment accrues interest at the annual rate of 10% beginning on the entry of the judgment. Direct payments or equitable credits are applied to support arrearages as directed in the court order. Any written agreement between parties regarding support arrearages must be made only by written affidavit signed by both parties. An arrearage calculator may be developed by a government agency using an automated transfer of data from the child support registry. (Title 25)

**HB2440: public participation in government** - In actions involving a party's right to petition that is made as part of an initiative or referendum, the defending party may file a motion to dismiss any legal actions. The court must give calendar preference when possible and must conduct an expedited hearing after the motion is filed. The court must grant the motion unless the defending party's acts caused actual compensable injury to the responding party. The motion to dismiss may be filed within 90 days and the court must award the party costs and reasonable attorney fees if the motion is granted. (Title 12)

**H2484: secure records disposal** - Prohibits an entity from knowingly discarding or disposing of documents that contain an individual's first and last name or first initial and last name with either the person's social security number, credit or debit card number, retirement account number, savings or checking number, securities entitlement account number, or driver's license or ID number. This only applies to paper records and paper documents. Civil penalties will be imposed for violations. An entity that maintains and complies with the entity's own procedures for discarding or disposing of documents that are consistent with the requirements set forth in this bill will be deemed in compliance. Effective October 1, 2006. (Titles 13 and 44)

**H2559: juvenile hearings; jury trials** - In counties with a population greater than 500,000, persons whose parental rights are challenged at a termination hearing may request a change of judge and be provided with a decision within 30 days. If the court does not terminate parental rights, another action can be brought only if the action relates to a new allegation or new information. Any evidence that was considered or introduced at a prior proceeding may be presented if admissible. The Administrative Office of the Courts, if funding is available, is required to establish a permanency mediation program in the juvenile court to provide non-adversarial dispute resolution alternatives. Previously filed dependency petitions will be used by the AOC to prescribe the funding formula for each county juvenile court. Appropriates \$525,000 from the state general fund to the AOC for the dispute resolution program. (Title 8)

**H2712: tax decisions; distribution** - Requires various agencies to provide tax decisions to the law libraries of Maricopa County, ASU and U of A Colleges of Law. Tax decisions must be published on their official website. Requires the Supreme Court to adopt rules to establish procedures to distribute tax decisions to the general public and determine what tax decisions are appropriate for distribution. (Titles 12 and 42)

**S1338: personal information; security breach; notification** - Requires law enforcement agencies, prosecution agencies and courts to create and maintain an information security policy that includes notification of a breach of the security system. Requires a business that owns or licenses unencrypted computerized data to notify state residents of a breach of their security system when personal information of the individuals has been compromised. The notice can be written, electronic or telephonic but must be in the most expedient manner possible without unreasonable delay subject to the needs of law enforcement. If the cost of notice would exceed \$50,000 or exceeds \$100,000, an agency may substitute notice through all of the following: electronic mail, conspicuous postings on a website and notification of major statewide media. There is a delayed effective date of January 1, 2007. (Title 44)

**S1376: capital case litigation; public defender** - Establishes a state capital post-conviction public defender office effective February 2007. Specifies appointment, qualifications and duties. Limits the public defender from employing more than three deputies and more than four other employees. Court appointed counsel for capital defendants in post-conviction proceedings must be from the capital post-conviction public defender's office unless a conflict exists or the court makes a finding that the office can not represent the defendant. Any non-public defender appointees must be in good standing of the state bar for at least five years, have practiced state criminal appeal or post-conviction proceedings for at least three years and have never represented the defendant in question unless the defendant and counsel expressly request continued representation. For every person represented the state capital post-conviction public defender's office must request reimbursement from the court in which the person was convicted for fees it incurs. The county must pay half of the fees incurred by the state but not to exceed \$47,000. Appropriates \$220,000 for fiscal year 2006-2007. There is a request to increase the budget by approximately \$125,000. (Titles 13 and 41)

**S1430: children; cps** - Requires CPS to inform person under investigation of certain enumerated rights. The CPS worker must make all reasonable efforts to provide these rights and receive written confirmation of doing so before a child can be removed from the home. Changes the makeup of the review team by removing one DES member. At least one FCRB member must be present at a review team meeting. If two members of the FCRB are not available, the review team must consult an employee of the family advocacy office established in section 8-902. Establishes an 11 member Family Advocacy Council (FAC) and

FAC Office to serve as a resource to families as well as advocate on the parent's behalf. (Titles 8 and 41)

**S1444: sentencing; third felony offenses** - Amends the criminal code to require a life sentence for any defendant with two prior violent or aggravated offenses that is convicted of a third offense, with eligibility for release only after serving thirty-five years. Prior convictions must have occurred within fifteen years of the current offense and the sentence for the first two felony convictions must have been imposed before the conduct occurred that gave rise to the third conviction. Any suspension of sentence, probation, pardon or release is prohibited. The offenses which are considered a violent or aggravated felony are listed. (Title 13)

**HCR2015: judges; merit selection, populations** - Amends the Constitution to allow the 2006 general election ballot to carry the question of amending various sections of Article 6 of the state constitution to change the population threshold for direct election of superior court judges to counties with a population of fewer than 600,000. (Title 98)

**SCR1033: meth offenses; probation** - Amends the constitution to remove methamphetamine from the provisions of A.R.S. 13- 901.01 (Prop 200). (Title 97)

## **F. Legislative Impact Summary**

Ms. Melinda Hardman, AOC Court Services Division

Ms. Hardman presented a report that the AOC has produced for the last two years, called the Legislative Impact Summary. The report is prepared to summarize the legislation that impacts court processing and administrative matters. She presented the 2005 report to the committee to find out:

- If people in the courts were aware of it;
- Would they find it useful;
- How can the AOC improve upon it;
- Who in the courts should receive it, and
- What is the best method to disseminate the information?

The following recommendations we made:

- A number of judges were not aware of it, but it would be a very useful tool.
- Send out an email to all judges with notice of the 2006 Legislative Impact Summary and a link. This way it reaches everyone, and people that didn't know about it, will now have access. Judges can decide for themselves whether or not it is a useful tool.
- Court Clerks and administrative staff are aware of it and find it very useful.
- It would be helpful if the report could be separated out based on level of court and area of law (civil, criminal, family, etc).

## **G. Codification of Minimum Accounting Standards (MAS)**

Mr. John Sousa, AOC Court Services Division

Mr. Sousa presented the proposed changes to the current MAS stating a workgroup was established to codify MAS as part of an ongoing project at the AOC to codify policies and procedures in various areas. Some of the keys changes proposed are to:

- Eliminate repetition by restructuring the document to group and consolidate related topics;
- Provide clarification by changing a lot of the language;
- Change commentary language to code language to remove the implication of suggestions and make them standards;
- Clarify time frames for many operating and reporting procedures;
- Remove the attachments that were part of the original document and provide a link to access the forms, so as there are updates to the forms, they don't need to update the document, and
- Establish a new standard for the use of a mail payments log for handling the recording of payments received in the mail.

Committee questions and concerns:

- If a county already has a safe combination control in place that is not identical to the standard established in MAS, will they be in violation?
  1. Exceptions can be presented to the AOC for review and approval.
- Are payroll systems included in the financial systems of E.3.a that mandate the use of automated financial systems?
  1. No, the references here to financial systems have more to do with AZTEC type systems.

**MOTION:** To table approval of the Minimum Accounting Standards to the September Committee meeting. Motion passed unanimously. **COSC-06-024**

#### **H. Arizona Rules of Family Law Procedure (ARFLP)**

Ms. Konnie Neal, AOC Court Services Division

Ms. Neal gave a brief history of the establishment of the Family Law Rules Review Committee once the rules became effective. The Committee was established to:

- Garner feedback on what was working and what wasn't;
- Hammer out the kinks;
- Track any unintended consequences, and
- To provide a report in two years of proposed changes.

She encouraged members to submit comments on the Rules, so the Family Law Rules Review Committee can review and discuss the recommendations via the comment form on the website at: <http://supreme.state.az.us/drrc/CommentForm.asp>

#### **I. Arizona Rules of Protective Order Procedure (ARPOP) and New Project Passport Protective Order Forms**

Judge William O'Neil

Ms. Konnie Neal, AOC Court Services Division

Ms. Neal gave a brief history of the Domestic Violence Rules Committee. It was established to create Domestic Violence Rules from the Domestic Violence Benchbook, Rule 96 in ARFLP. The key issues the Domestic Violence Rules need to address are to:

- Remove the DV Benchbook from Rule 96 and create procedural rules, and
- Make the rules in clear language that is easy for pro se litigants to find. The primary people that come in on these matters are not attorneys, therefore the rules need to be easy to understand and determine where they can get further information.

The ARPOP draft presented fulfill these goals, and are meant to be stand alone rules. The DV Rules Committee will file a petition in November with ARPOP, for approval. Committee members are encouraged to make comments and suggestions once they have reviewed the ARPOP. A comment form regarding ARPOP is available on the Internet at:

<http://supreme.state.az.us/cidvc/DVRules/comment.asp>

Judge O'Neil gave a brief history of Projection Passport, a national movement to standardize a recognizable first page of Protective Orders to make them immediately recognizable and have the same information in the same location for all states. Arizona has been a leading state in this area. There have been no substantive changes to the Protective Order forms; there were just formatting changes for automation. Some of the changes made were:

- "Defendant/Plaintiff Relationship" was added for automation interface;
- "Estimated Date of Birth" was added because the database requires a birth date, which may not be known by the plaintiff. This alerts law enforcement that it may not be accurate;
- Changed "Civil Standby" to "Law Enforcement Standby" to add clarity, and
- Added an additional warning to the defendant informing them that they can still be in violation of the Order, even if the Plaintiff initiates contact.

The Defendant Guide Sheet was created to further expand on the information to the defendant. The key points of the Guide Sheet are:

- When children are listed on Protective Orders, custody issues need to be addressed at Superior Court;
- Protective Orders expire one year from the date of service, not one year from the date of issue;
- Gives information about the right to a hearing, and Brady eligibility;
- Only the judge can modify or dismiss the Order;
- Law enforcement does not have the responsibility or authority to settle property disputes, and
- Information about turning in firearms.

Committee questions and concerns:

- Advising the defendant, "If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff," misinforms the defendant that they can get a protective order simply because the plaintiff is contacting them. That is not the statutory basis for granting a protective order. This language needs to be removed or clarified; otherwise courts will be clogged with defendants saying the Order from the court says they can have their own protective order.
- It is confusing to plaintiffs that they also are not allowed to initiate contact. It should be stated in the Protective Order that the plaintiff cannot contact the defendant. The problem with that is, when you have done nothing wrong, does the court have the authority to tell you that you cannot do certain things? The impact is potentially arresting plaintiffs for violating their own Order. The judge needs to ask all the questions and spell out what kind of contact is necessary and allowable.
- Defendants know they can get their own Order, so remove that line from the Protective Order form and from #6 on the Defendant Guide Sheet. Just keep the warning that even if the plaintiff initiates contact, they may be in violation of the Order.
- Under the "Law Enforcement Stand-by" section of the Protective Order form and Defendant Guide Sheet add they cannot settle custody or parenting time disputes either.

**MOTION:** To approve the adoption of the Defendant Guide Sheet and Protective Order forms, with the recommended changes. Motion passed unanimously. **COSC-06-025**

### **III. OTHER BUSINESS**

#### **A. Issues for the Committee to consider that will be on the next meeting agenda:**

- Whether the Committee wants to allow people that cannot attend in person to participate telephonically, and
- If the Committee would like to have one meeting per year held outside Maricopa, possibly in Tucson or Flagstaff.

#### **B. Next Meeting:**

**Friday, September 22, 2006**  
State Courts Building  
Conference Rooms 119 A & B  
10:00 a.m. – 2:00 p.m.

#### **C. Good of the Order / Call to the Public**

No response.

### **IV. ADJOURNMENT**

The meeting adjourned at 2:00 pm.

Respectfully submitted,  
Susan Pickard  
COSC Staff